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# Decision

**Matter of:** Veterans Choice Medical Equipment, LLC

**File:** B-419991; B-419991.2

**Date:** October 20, 2021

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Daniel McFeely, Esq., Department of Veterans Affairs, for the agency.  
Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest that the agency unreasonably evaluated the awardee's proposal under the corporate experience evaluation factor is denied where the agency reasonably interpreted the terms of the solicitation to allow it to evaluate an incomplete corporate experience submission, and where the source selection authority reasonably considered information within the evaluation team's personal knowledge.

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## DECISION

Veterans Choice Medical Equipment, LLC, a small business of Vista, California, protests the award of a contract to Mid-Cities Home Medical Delivery Service, LLC, a small business of Grand Prairie, Texas, under request for proposals (RFP) No. 36C26221R0002, issued by the Department of Veterans Affairs (VA) for in-home oxygen and ventilator services in the agency's Veteran Integrated Service Network 22 (VISN 22) region in southern California. Veterans Choice contends that the agency's evaluation of the awardee's proposal was unreasonable.

We deny the protest.

## BACKGROUND

The VA issued the RFP on January 19, 2021, as a set-aside procurement for service-disabled veteran-owned small businesses under the commercial item procurement procedures of Federal Acquisition Regulation (FAR) part 12. Agency Report (AR),

Exh. 3, RFP at 4.<sup>1</sup> The RFP contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for in-home oxygen and ventilator services for four VA healthcare systems in southern California for a 1-year base period and seven 1-year option periods.<sup>2</sup> *Id.* at 4, 7.

The RFP provided for award on a best-value tradeoff basis, considering two factors: experience and price. *Id.* at 76. The RFP stated that the experience factor was more important than price. *Id.*

Relevant to this protest, the RFP instructed offerors to submit a narrative describing their experience providing in-home oxygen and ventilator services. RFP at 75. The RFP stated that offerors were to provide certain information--including, e.g., the contract number and the dates the offeror performed the contract--for each contract reference included in the experience narrative. *Id.* The RFP provided that failure to submit the required information may be viewed as evidence of lack of experience. *Id.*

Mid-Cities submitted a single contract reference on behalf of its proposed subcontractor, [DELETED], which described a contract where [DELETED] provided in-home oxygen services in southern California. AR, Exh. 11, Mid-Cities Proposal at 32-35. Both the experience narrative that Mid-Cities submitted and the reference for the [DELETED] contract mentioned separate in-home ventilator services that [DELETED] is currently providing to 19 patients for the VA Greater Los Angeles Healthcare System, but neither included certain information required by the solicitation, such as a contract number, dates of performance, or point of contact information for these services. *Id.* at 13, 34.

The RFP stated that the agency would evaluate each offeror's experience "providing contracted in-home oxygen services and contracted in-home ventilator services to patients in their place of residence." The RFP did not specify an adjectival rating system for the experience factor. However, the source selection plan (SSP) stated that offerors would be assigned a rating of either good, satisfactory, marginal, or unsatisfactory for the experience factor. AR, Exh. 8, SSP at 6-7.

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<sup>1</sup> The agency amended the solicitation six times, including a complete replacement of the originally issued RFP as amendment 0001. Contracting Officer's Statement (COS) at 2. Unless otherwise noted, citations to the solicitation in this decision are to the latest complete version issued by the agency as amendment 0001. Also, the agency used a Bates numbering system to provide page numbers in its exhibits. Citations in this decision refer to the Bates numbers assigned by the agency.

<sup>2</sup> The four healthcare systems are: the VA Long Beach Healthcare System; the VA Loma Linda Healthcare System; the VA Greater Los Angeles Healthcare System; and the VA San Diego Healthcare System. RFP at 4.

On or before the March 2 closing date, the agency received proposals from five offerors, including Veterans Choice and Mid-Cities. COS at 3. The agency evaluated Veterans Choice and Mid-Cities’s proposals as follows:

	Veterans Choice	Mid-Cities
Experience	Good	Good
Price	\$29,645,452	\$25,358,568

*Id.*; AR, Exh. 5, Source Selection Decision Memorandum (SSDM) at 9.

In evaluating Mid-Cities’s proposal as “good” under the experience factor, the technical evaluation board (TEB) assessed multiple strengths based on the [DELETED] contract reference. AR, Exh. 7, TEB Consensus Evaluation at 2-3. However, these strengths were each based on [DELETED]’s provision of in-home oxygen services; the TEB did not credit or otherwise discuss [DELETED]’s alluded-to experience providing in-home ventilator services for the VA Greater Los Angeles Healthcare System. *Id.*

As relevant to this protest, the source selection authority (SSA) noted in her analysis that [DELETED] had experience providing in-home ventilator services for the VA Greater Los Angeles Healthcare System. AR, Exh. 5, SSDM at 10. The SSA states that in order to ensure the accuracy of the SSDM, she contacted the chief of prosthetics for the VA Greater Los Angeles Healthcare System<sup>3</sup>--who the SSA states is overseeing the in-home ventilator services for that healthcare system--to verify that [DELETED] was currently providing in-home ventilator service to 19 patients. Supp. COS at 3. At the time of award, the SSA also had personal knowledge that [DELETED] had provided in-home ventilator services for the VA Greater Los Angeles Healthcare System for “many years,” covering multiple contracts. *Id.* at 2. The SSA’s personal knowledge was gained from her role as a branch chief and contracting officer at the VA’s network contracting office 22, which office manages this and similar procurements for VISN 22. *Id.*

Based on the above—and despite the lack of a contract reference in Mid-Cities’s proposal--the SSA concluded that [DELETED] had “extensive” experience providing in-home ventilator services in southern California. AR, Exh. 5, SSDM at 10. The SSA found that [DELETED]’s experience would benefit the government because it would provide Mid-Cities with familiarity with VISN 22 practices and procedures as well as the southern California customer base. *Id.*

In her comparative analysis of the offers, the SSA concluded that Mid-Cities’s proposal was the most advantageous and presented the best value under the terms of the RFP.

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<sup>3</sup> The chief of prosthetics for the VA Greater Los Angeles Healthcare System was also a TEB member for this procurement. Supp. COS at 3; AR, Exh. 6, TEB Summary Report at 2.

AR, Exh. 5, SSDM at 13-19. In comparing Veterans Choice and Mid-Cities's proposals, the SSA found that both proposals demonstrated a depth and breadth of experience that would reduce the risk of disruptions during contract performance, but noted that Veterans Choice had been providing the relevant services longer, in a greater number of locations, and to a larger patient base than Mid-Cities. *Id.* at 18. However, the SSA concluded that the additional value offered by Veterans Choice's proposal did not justify a \$4,286,884, or 17 percent, price premium. *Id.*

The agency subsequently notified Veterans Choice of the award to Mid-Cities. COS at 3. The agency then provided Veterans Choice with a debriefing, and this protest followed. *Id.*

## DISCUSSION

Veterans Choice challenges the agency's evaluation of Mid-Cities's proposal under the experience factor. Comments & Supp. Protest at 2-6; Supp. Comments at 2-7. The protester makes other collateral arguments.<sup>4</sup> While we do not address each of the protester's allegations and variations thereof, we have reviewed them all and find no basis to sustain the protest.

First, Veterans Choice contends that the agency unreasonably considered Mid-Cities's proposed subcontractor [DELETED]'s experience providing in-home ventilation services in southern California because the proposal did not include a reference contract with all the explanatory information required by the solicitation. Supp. Comments at 2-3. The protester points to the RFP's language that broad "statements claiming experience . . . that do not include specific references to prior contract work" or other information required by the RFP "are not acceptable." Comments & Supp. Protest at 2-4; Supp. Comments at 2-3; see RFP at 75.

The agency responds that the RFP merely states that a failure to provide information substantiating experience "may be viewed" as evidence of a lack of experience and that the RFP language does not require that the agency reject [DELETED]'s claimed experience here. Supp. MOL at 7.

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<sup>4</sup> We dismiss the arguments raised by Veterans Choice in its initial protest and the argument that Mid-Cities's proposal failed to meet the RFP's subcontracting limitations without considering them on the merits. Protest at 7-11; Comments & Supp. Protest at 5-6. The agency provided detailed responses to these allegations. See Memorandum of Law (MOL) at 3-22; Supp. MOL at 11-17. In response, Veterans Choice did not rebut or address many of the agency's arguments, instead raising the supplemental protest grounds that are discussed in this decision. See Comments & Supp. Protest at 2-6; See Supp. Comments at 2-7. Accordingly, we dismiss the protest grounds on which Veterans Choice did not comment as abandoned. See *Tec-Masters, Inc.*, B-416235, July 12, 2018, 2018 CPD ¶ 241 at 6.

Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. *Bauer Techs., Inc.*, B-415717.2, B-415717.3, June 22, 2018, 2018 CPD ¶ 217 at 4. Where a protester and an agency disagree over the meaning of solicitation language, we will resolve the matter by assessing whether each posited interpretation is reasonable. *Anders Constr., Inc.*, B-414261, Apr. 11, 2017, 2017 CPD ¶ 121 at 3. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Planned Sys. Int'l, Inc.*, B-413028.5, Feb. 21, 2018, 2018 CPD ¶ 126 at 6.

Our review of the solicitation's terms does not reveal, and the protester has not pointed to, any requirement for the agency to evaluate proposals for whether the submitted contract references meet all the RFQ's submission requirements. Accordingly, we find reasonable the agency's view that the RFP's use of "may" in the submission instructions allowed the agency to consider an offeror's proffered experience that did not conform entirely to the submission requirements. On this record, we deny this ground of protest.

Veterans Choice also challenges the SSA's reliance on her personal knowledge in evaluating Mid-Cities's proposal under the experience factor and in making the source selection decision. As noted above, the SSA credited Mid-Cities's proposal with "extensive" experience providing in-home ventilator services in southern California based on the SSA's and a TEB member's knowledge of [DELETED]'s prior contracts and current services for the VA Greater Los Angeles Healthcare System. The protester asserts that it was improper for the SSA to rely on her own and another TEB member's personal knowledge of [DELETED]'s in-home ventilator experience when a complete contract reference for that experience was not included in Mid-Cities's proposal. Comments & Supp. Protest at 2-4; Supp. Comments 3, 6-7. We disagree.

Our decisions have explained that an agency may consider experience information known to the agency and not found in the firm's proposal. See, e.g., *SNAP, Inc.*, B-409609, B-409609.3, June 20, 2014, 2014 CPD ¶ 187 at 8; *Nuclear Prod. Partners, LLC; Integrated Nuclear Prod. Sols. LLC*, B-407948 *et al.*, Apr. 29, 2013, 2013 CPD ¶ 112 at 20 (no logical basis to preclude agency from considering information about which it was aware in evaluating an offeror's corporate experience). Here, the VA reasonably used the personal knowledge of the SSA and the TEB member to determine that [DELETED] had prior experience providing in-home ventilator services in southern California. Therefore, we find no basis to sustain the protest.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel